

1 M. Anderson Berry (SBN 262879)
2 Leslie Guillon (SBN 222400)
3 **CLAYEO C. ARNOLD,**
4 **A PROFESSIONAL LAW CORP.**
5 865 Howe Avenue
6 Sacramento, CA 95825
7 Telephone: (916) 777-7777
8 Facsimile: (916) 924-1829
9 ABerry@Justice4You.com
10 LGuillon@Justice4You.com

11 John A. Yanchunis (*Pro Hac Vice*)
12 Ryan J. McGee (*Pro Hac Vice*)
13 **MORGAN & MORGAN**
14 **COMPLEX LITIGATION GROUP**
15 201 N. Franklin St., 7th Floor
16 Tampa, FL 33602
17 Telephone: (813) 223-5505
18 Facsimile: (813) 223-5402
19 JYanchunis@ForThePeople.com
20 RMcGee@ForThePeople.com

21 *Attorneys for Plaintiffs*

22
23
24
25
26
27
28
**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

29 *IN RE: ZOOM VIDEO COMMUNICATIONS,*
30 *INC. PRIVACY LITIGATION*

31 This Document Relates To: ALL ACTIONS

32 **Master File No. 5:20-cv-02155-LHK**

33 **APPLICATION OF JOHN A.**
34 **YANCHUNIS FOR INTERIM CLASS**
35 **COUNSEL AND ANDERSON BERRY**
36 **FOR INTERIM CLASS COUNSEL,**
37 **OR ALTERNATIVELY, LIAISON**
38 **COUNSEL**

John Yanchunis, counsel in *Buxbaum, et al. v. Zoom Video Communications, Inc.*, Case No. 5:20-cv-02939-LHK (N.D. Cal.), seeks appointment as Interim Class Counsel.

A. Mr. Yanchunis' Leadership will Benefit the Class

Mr. Yanchunis brings unrivaled experience in major data breach and privacy class litigation, having held leadership in the vast majority of major data breach cases across the country. Mr. Yanchunis oversaw the successful prosecution and settlement of *In re: Yahoo! Inc. Customer Data Breach Security Litigation*, No. 16-md-02752-LHK (N.D. Cal.) (final hearing pending before this Court on June 18, 2020) and has also held leadership roles in Capitol One, Equifax, Facebook, the Office Personnel Management Data ("OPM"), Home Depot, Target, and others. That experience extends far beyond simply seeking leadership and opposing dispositive motions; Mr. Yanchunis has heavily litigated, conducted significant discovery, and briefed essentially every aspect of privacy class cases, including defeating numerous challenges to standing, working with industry-leading experts to devise a wide range of complex and novel damages models, and achieving contested class certification in a data breach case. *See Adkins v. Facebook, Inc.*, 424 F.Supp.3d 686, 687 (N.D. Cal. 2019) (certifying class under Rule 23(b)(2)). Mr. Yanchunis has deposed numerous corporate representatives, Chief Information Security Officers ("CISOs"), and technical and damages witnesses and experts.

B. Mr. Yanchunis has Performed Substantial Work Investigating this Case

Mr. Yanchunis has already commenced substantive development of Plaintiffs' claims here by retaining noted experts in cybersecurity and damages and charging them to engage in the development of the case. These experts include a leading cyber security expert and an accomplished financial expert, both of whom served in those expert capacities before this Court in *Yahoo!*. Mr. Yanchunis has worked with these experts in numerous cases; thus, he knows their skillsets and can utilize their respective strengths to the efficient yet effective benefit of the consumers in this case. Moreover, Morgan & Morgan, a plaintiffs only law firm with approximately 550 lawyers, also employs two retired FBI agents, who in the past have been crucial to developing pre-discovery records in data breach and privacy litigation and have also been investigating this case, focusing on the development of information and strategies before the commencement of formal discovery.

C. Mr. Yanchunis has Significant Experience and Knowledge of the Applicable Law

Mr. Yanchunis leads Morgan & Morgan's class action group. A detailed statement of his relevant cases is attached as Exhibit A. Morgan & Morgan is the largest Plaintiff's, contingency-only law firm in the country, with approximately 550 lawyers in more than 50 offices throughout the United States. Its depth as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country.¹ Mr. Yanchunis—whose career as a trial lawyer began 38 years ago following the completion of a two-year clerkship with United States District Judge Carl O. Bue, Jr., Southern District of Texas, (now retired)—has efficiently and expeditiously led many privacy and data breach MDL and non-MDL class action proceedings, including as Lead or Co-Lead Counsel, as detailed below with each case's current status denoted in parentheses.

Mr. Yanchunis began his work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). *See Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). He also served as co-Lead Counsel in the DPPA class cases, *Davis v. Bank of America*, No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

Mr. Yanchunis's MDL data breach experience includes: *In re: Capitol One Consumer Data Security Breach Litigation*, No. 1:19-md-02915 (E.D. Va.) ("*Capitol One*") (Co-Led Counsel); *In*

¹ Mr. Yanchunis's firm, Morgan & Morgan, will self-fund the litigation and will not seek contributions from those not named in the Court's appointment order.

1 *re: Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.)
 2 (“*Yahoo*”) (Lead Counsel) (final hearing seeking approval of \$117,500,000.00 common fund
 3 settlement set for June 18, 2020); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*,
 4 1:17-md-2800-TWT (N.D. Ga.) (Plaintiffs’ Steering Committee) (final approval of \$380.5 million
 5 fund granted December 19, 2019); *In re: U.S. Office of Personnel Management Data Security*
 6 *Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (Executive Committee) (dismissal on standing
 7 grounds recently reversed on appeal to the D.C. Circuit); *In re The Home Depot, Inc. Consumer*
 8 *Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (Co-Lead Counsel) (final
 9 judgment entered approving a settlement on behalf of a class of 40 million consumers with total
 10 value of \$29,025,000); and *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522
 11 (D. Minn.) (Executive Committee) (final judgment approving a settlement on behalf of a class of
 12 approximately 100 million consumers upheld by the 8th Circuit).

13 Mr. Yanchunis’ court-appointed leadership experience in non-MDL, data breach class
 14 actions is likewise significant, including: *Adkins, v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.)
 15 (Co-Lead Counsel) (“*Facebook*”) (contested injunctive class certified under Rule 23(b)(2); Motion
 16 for Preliminary Approval of settlement filed Feb. 7, 2020); *Walters v. Kimpton Hotel & Restaurant*,
 17 No. 3:16-cv-05387 (N.D. Cal.) (“*Kimpton*”) (Lead Counsel) (final approval of class settlement
 18 entered July 11, 2019); and *In re: Arby’s Restaurant Group, Inc. Data Security Litigation*, Nos.
 19 1:17-cv-514 and 1:17-cv-1035 (N.D. Ga.) (co-Liaison Counsel) (final approval of class settlement
 20 entered June 6, 2019).

21 Mr. Yanchunis’ experience in these major data breach matters extends far beyond simply
 22 briefing threshold issues and negotiating settlements. Rather, Mr. Yanchunis has personally depose
 23 corporate representatives and CISOs in cases such as *Capitol One*, *Yahoo*, *Kimpton*, and *Facebook*.
 24 In *Kimpton*, the Court ordered the parties to proceed first with discovery and summary judgment on
 25 liability and damages as to the named plaintiff only. Accordingly, nearly a dozen depositions and
 26 production and review of tens of thousands of pages of documents followed. In *Yahoo*, Defendants
 27 produced more than 9 million pages of documents, Plaintiffs depose nine witnesses, and Plaintiffs
 28 provided reports for, and defended depositions of, their four expert witnesses. And, Mr. Yanchunis’

1 *Yahoo* and *Facebook* teams briefed class certification and *Daubert* motions. Hence, the breadth of
2 Mr. Yanchunis' data breach experience is equaled only by its depth. Considering this extensive
3 experience and commitment to the cybersecurity arena, Mr. Yanchunis was recently recognized by
4 Law360 as one of its three Cybersecurity MVPs. Similarly, in 2016, Mr. Yanchunis was recognized
5 by the National Law Journal as its 2016 Trailblazer in the Area of Cybersecurity & Data Privacy.

6 Mr. Yanchunis is also very active in speaking on privacy related issues, including at
7 international conferences, having spoken at the University of Haifa's 2019 Class Action Conference,
8 in April 2019, in Haifa, Israel. Mr. Yanchunis also routinely speaks domestically on privacy and
9 cybersecurity related topics including at, by way of example: the NetDiligence Cyber Risk Forum
10 in Philadelphia, PA (June 2017); the Consumer Protection Law Committee Convention in Boca
11 Raton, FL (June 2017); many Harris Martin seminars, including MDL Conference, Equifax, St.
12 Louis, MO (Nov. 2017), and MDL Conference Marriott Data Breach Litigation Conference, Miami,
13 FL (Jan. 2019); the New Jersey Assoc. for Justice, Atlantic City, NJ (May 2018); the Los Angeles
14 Class Action Conference, Costa Mesa, CA (Jan. 2019); the Class Action Mastery Forum, University
15 of San Diego (Jan. 2019); and Mass Torts Made Perfect, Las Vegas, Nevada (Oct. 2019). He has
16 also been selected to present at the 2020 Global Class Actions Symposium's Privacy/Breach of Data
17 Protection section held at The Law Society in London, England, in November 2020. Mr. Yanchunis
18 is also a member of the Sedona Conference, participating in Working Group 11, which focuses on
19 data security and privacy liability. He also spoke before the Sedona Conference at its February 2019
20 meeting in Houston, Texas.

21 In addition to Mr. Yanchunis' experience, his co-counsel Mr. Anderson Berry will actively
22 participate in this litigation and seeks appointment as Interim Class Counsel or Liaison Counsel.
23 Mr. Berry obtained his undergraduate in English from the University of California, Berkeley, with
24 highest honors, and after working as a private investigator in California, graduated from U.C.
25 Berkeley School of Law. He entered private practice with Jones Day, where he focused on complex
26 commercial litigation, including class action defense, then served as an Assistant United States
27 Attorney for the Eastern District of California in the Affirmative Civil Enforcement Unit, where he
28 handled a wide variety of complex cases recovering millions of dollars for the United States. His

1 experience will strengthen the already experienced and knowledgeable team Mr. Yanchunis
 2 oversees at Morgan & Morgan and contribute valuable resources to this litigation.

3 **D. Mr. Yanchunis will Contribute the Resources Necessary for the Litigation**

4 Morgan & Morgan has the resources necessary to prosecute this case; with an experienced
 5 team of lawyers, many of whom clerked at United States District Court or Circuit Court level (all
 6 of whom have experience in data breach litigation at various levels), Mr. Yanchunis' team is well
 7 equipped to litigate this case. Because of its size and the nature of its practice, Morgan & Morgan
 8 is self-funded and does not (and will not here) use any third-party financing, litigating on a pure
 9 contingency basis. Mr. Yanchunis is committed to devoting the necessary time and resources to
 10 properly and timely prosecute this case. Finally, Mr. Yanchunis' ability to work collaboratively with
 11 all is well known, as reflected in his many prior appointments, including *Yahoo!* before this Court,
 12 where his appointment as lead counsel provided him the opportunity to collaborate with the other
 13 lawyers and law firms which had filed cases. He is willing to work with any of the lawyers who also
 14 might seek leadership positions in this case should the Court decide to expand the leadership beyond
 15 his application to represent the plaintiffs and the putative class.

16 Dated: June 4, 2020

Respectfully Submitted,

17 By: /s/ John A. Yanchunis
 18 jyanchunis@ForThePeople.com
 19 **MORGAN & MORGAN**
 20 **COMPLEX LITIGATION GROUP**
 21 201 N. Franklin Street, 7th Floor
 22 Tampa, Florida 33602
 23 Telephone: (813) 223-5505
 24 Facsimile: (813) 223-5402
 25
 26
 27
 28